

Board of Adjustment



Minutes

City Council Chambers, Lower Level
September 8, 2009

Board members Present:

Garrett McCray, Chair
Scott Thomas, Vice Chair
Greg Hitchens
Linda Sullivan
Tyler Stradling
Dianne von Borstel

Board members Absent:

Judah Nativio (unexcused)

Staff Present:

Gordon Sheffield
John Wesley
Angelica Guevara
Mia Lozano-Helland
Jeff McVay
Wahid Alam

Others Present:

Bill Allison
Ken Ott
Others

The study session began at 4:38 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 7:18 p.m., the following items were considered and recorded.

Study Session 4:38 p.m.

- A. The study session began at 4:38 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Election of Officers - A motion was made to nominate Boardmember McCray as Chair by Boardmember Hitchens and seconded by Boardmember Thomas. Vote: Passed 6-0. A motion was made to nominate Boardmember Thomas as Vice Chair by Boardmember Hitchens and seconded by Boardmember von Borstel. Vote: Passed 6-0.
- C. Zoning Administrator update – Mr. Sheffield reminded the Board of the Board and Committee Orientation on Wednesday, September 9, 2009 in the upper level Council Chambers beginning at 6:00 PM. City staff members and Mayor Smith will provide information and guidance for all advisory board members. Chair McCray mentioned his experience attending this session in the past, was very positive.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the July 14, 2009 Meeting A motion was made to approve the minutes by Boardmember von Borstel and seconded by Boardmember Stradling. Vote: Passed 6-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Hitchens. Vote: Passed 5-0 (Stradling abstaining)

Board of Adjustment Meeting September 8, 2009

Case No.: BA09-019

Location: 758 East Brown Road

Subject: Requesting: 1) a Development Incentive Permit (DIP); and 2) Special Use Permit (SUP) both in conjunction with the development of a convenience store with an automobile service station in the C-2 zoning district.

Decision: Approved with conditions

Summary: Bill Allison and Scott Nye represented the case and provided a summary of the project details to date including the design and placement of the fueling canopies, increased landscaping along Brown Rd., increased foundation base for the convenience store building, improved separation between the Brown Rd. driveway and the intersection with Horne and pedestrian traffic, and improved circulation for the fuel trucks. Mr. Allison stated the request for an additional driveway on Brown Rd. is the only issue remaining. Mr. Alam presented the staff report and clarified the conditions of approval. Boardmember Hitchens asked for a clarification of the canopy setbacks and driveway widths. Boardmember Thomas asked for the possibility of a right in and right out driveway or 'pork chop'. A discussion ensued regarding the driveway issue.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember von Borstel to approve this case with the following staff conditions, and a revised Condition 2 allowing the existing driveway on Brown Rd. to remain per the revised site plan submitted by the applicant at the meeting.

1. *Compliance with the site, landscape, and sign plans submitted except as modified by the conditions below.*
2. *Replacement of all dead and dying landscape.*
3. *Install screen walls around the above ground propane tanks. Walls shall be along at least three sides, and of sufficient height so as to screen the tank and all mechanical or electrical equipment associated with it.*
4. *Install screen walls or berming/landscaping along Brown Road per 11-15-4(B)10.*
5. *Retention basins shall be designed per 11-15-3(D)1-9*
6. *Provide plant materials per 11-15-3(A) and 11-15-4(B).*
7. *Any detached sign along Brown Road shall not exceed twelve-feet (12') in height and eighty square feet (80 square feet) in area.*
8. *Any detached sign along Horne shall not exceed eight-feet (8') in height and fifty square feet (50 sf) in sign area.*
9. *All signs. Attached and detached, shall require review and approval by Planning Division staff prior to the issuance of building permits.*
10. *'Pump topper' signs greater than three square feet, and all exterior mounted point-of-sale signs shall not be permitted within the development. 'Pump topper' signs shall not be illuminated.*
11. *All conditions related to signs (Condition # 8 through 11, inclusive) may be modified only through the review and approval of a Special Use Permit for a Comprehensive Sign Plan.*
12. *Compliance with Preliminary Plan Review Team's comments, except as modified by the*

Board of Adjustment Meeting September 8, 2009

conditions listed above.

14. Compliance with all conditions of the Design Review Board.

15. Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.

Vote: Passed 5-0 (Stradling abstaining)

Findings:

- 1.1** This site located at the NWC Brown and Horne is currently vacant. In 2007 a fire destroyed the existing 7-Eleven store (2,585 square feet) built in 1984 and an automobile service station (2 MPD) built in 1994. The site has been left vacant since the fire.
- 1.2** The site is part of an existing operating shopping center with a free standing carwash and inline stores.
- 1.3** The proposed convenience store is 3,000 square feet with fuels stations (5 MPD).
- 1.4** The site is approximately 168 feet by 172 feet for an area of 28,896 square feet or 0.66 acres. Typically, more recently constructed, similar sized convenience store, with fuel pump stations at the street corners, occupy much larger site area.
- 1.5** The existing shopping center, car wash, and corner development site have multiple curb cut access from both Brown and Horne. These curb cuts provide adequate access for the entire development.
- 1.6** When reviewing redevelopment near an intersection one of the items reviewed by staff is the number and location of curb cuts. In this case there are existing curb cuts on both Horne and Brown in close proximity to the intersection.
- 1.7** Horne is a collector street, with the existing curb cut on the 'approach' side of the intersection that carries a low amount of traffic. The City does not have a specific separation requirement in these conditions and the City's Traffic Engineer is not concerned with leaving this driveway in place. Having this driveway helps with the traffic flow on this small site, therefore, staff is agreeable with leaving this curb cut in place.
- 1.8** The revised site plan submitted following the previous discussion by the Board has shifted the driveway along Brown Road approximately 30 feet west. Because of the currently existing curb cut, the lack of established traffic problems in this area, and the tight circulation issues on the site, the City's Traffic Engineer does not have a problem with accepting this site plan as proposed.
- 1.9** This approval includes limits on the use of signs for this project. The high pedestrian use of the intersection and the designation of Horne as a collector street reduce the need for full 12' high detached signs.

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**Board of Adjustment Meeting
September 8, 2009**

Case No.: BA09-025

Location: 2030 West Southern Avenue

Subject: Appeal of Zoning Administrator Hearing Officer decision regarding a Special Use Permit (SUP) in conjunction with the redevelopment of an automobile service station in the C-2 zoning district.

Decision: Approval with conditions
1. Compliance with the site plan submitted except as modified by the conditions below.
2. Compliance with Design Review approval (DR08-012)
3. Compliance with Substantial Conformance Improvement Permit (ZA08-001).
4. Compliance with all requirements of the Building Safety Division with regard to the issuance of a building permit.
5. Non-conforming and/or prohibited signs shall be brought into conformance prior to the issuance of a building permit.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Hitchens to approve this case on the consent agenda.

Vote: Passed 5-0 (Stradling abstained)

Findings:

- 1.1** This approval involves a renewal of an expired Special Use Permit (SUP) for an automobile service station. The project includes demolition of the existing Circle K site improvements (2,850 sf. C-store, 2,512 sf. canopy, 3,496 sf. auxiliary) and the construction of a 4,450 square foot Circle K and 4,066 square foot fueling canopy. The SUP renewal was reviewed and approved through Zoning Administrator Hearing Officer case ZA09-013 on April 21, 2009. By letter dated May 20, 2009 staff received a request to appeal that decision from Mr. Dominic Ricciardone, Manager, Dobson Square Center.
- 1.2** As noted in the previous approvals, justification for the SUP includes: 1) the compatibility of the use with the surrounding commercial uses, Banner Desert Medical Center, and Mesa Community College; 2) the existence of a gas station at this location for more than 20 years; and 3) the overall site improvements associated with redevelopment.
- 1.3** The primary concern of the appellant (neighboring property to the north) was to an existing 40-foot wide "use and enjoyment" easement along the north property line of the Circle K site. The appellant noted: 1) redevelopment of the Circle K as shown on the site plan will deprive the neighboring property of its legal right and benefit of the easement; 2) the SUP and associated redevelopment will directly impair the value of the neighboring property; 3) redevelopment of the site has potential to create overcrowding and reduced visibility; and 4) the appellant did not receive notification of previous hearings.

**Board of Adjustment Meeting
September 8, 2009**

- 1.4** As previously and currently presented, the Circle K redevelopment proposal is consistent with the intent of the Zoning Ordinance (as evidenced by the approval of a DIP), is consistent with the General Plan designation of Neighborhood Commercial, and will be compatible with and not detrimental to adjacent properties or the neighborhood. Consequently, sufficient justification has been provided to renew the requested SUP.
- 1.5** It is also important to note: 1) the subject easement is a private agreement between the property owners and cannot be extinguished without the consent of both property owners; 2) approval of the SUP cannot eliminate that easement and redevelopment cannot occur until that private issue is resolved; 3) the area of the easement is currently an unimproved dirt/gravel area bounded on the north by the appellant's property improvements and on the south by existing Circle K improvements; and 4) redevelopment of the Circle K property as shown on the site plan would result in a more efficient use of the property, improve vehicular circulation and safety through both sites, and eliminate vehicle parking and circulation on an unimproved surface.

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**Board of Adjustment Meeting
September 8, 2009**

Case No.: BA09-029

Location: 10247 East Keats Circle

Subject: Requesting: 1) a variance to allow a covered patio addition to encroach into the required side yard setback, and 2) a variance to allow a detached barbeque island to encroach into the required side yard setback, both in the R1-6-PAD zoning district.

Decision: Approved with conditions

Summary: During the study session it was determined that the variance for the barbeque would be withdrawn due to Mesa Zoning Ordinance § 11-13-2(B)3. As applied to these circumstances, the barbeque island is more than 6' from the house with a height that is less than 4'. There is an existing 8' side yard setback from the home to the property line, where there should have been a 10' setback, which includes encroachments of a gas meter and an electrical panel. Because of these existing encroachments, the side yard no longer functions for vehicular access.

The request was amended to a singular request: to allow a covered patio to encroach into the required side yard setback. Ken Ott and members of the construction team represented the case. Mr. Ott and his team summarized the project and the reasons for the request. Boardmember Stradling had a concern with the lack of unique conditions that would justify granting the variance. Ms. Guevara provided the staff report and recommendation based on the lack of justification related to special or unique conditions. A discussion ensued regarding the high level of encroachment requested for the patio cover. Mr. Sheffield suggested a compromise by reducing the encroachment into the side yard setback to 3 ft. It was clarified that the posts will be allowed at 7 ft. from the property line and an additional 2 ft. overhang encroachment.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Sullivan to approve this case with the amended request and condition.

- 1. The sideyard setback will be 7' to the post with a 2' roof overhang.*
- 2. Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 6-0

Findings:

- 1.1** The code defines a setback or yard as a minimum required open area adjacent to a lot line free from any structure. Minimum yard setbacks for the Villages of Eastridge Unit 2 are 20 foot in the front and rear, 5 foot on one side, and both sides totaling 15'. In addition, the code requires interior lots with no access to an alley maintain one side yard with a minimum width of 10 feet for vehicular access to the rear yard.

**Board of Adjustment Meeting
September 8, 2009**

- 1.2** The subject site is zoned R1-6-PAD and is a 5,696 sf. lot surrounded by existing single family residences also zoned R1-6-PAD of similar size and shape and does not have access from a public alley. The lots within the subdivision range in size from 5,500 sq. ft. to 8,739 sq. ft.
- 1.3** The site plan includes a general location of the existing home, the existing swimming pool and spa, the lattice patio and the barbeque island location. The lattice patio and barbeque island are permitted provided a minimum 10' foot side yard setback is maintained from the side (eastern) property line.
- 1.4** The Villages of Eastridge Unit 2" subdivision was rezoned in 2001 to R1-6-PAD. The Zoning Code allows PAD Overlays to provide unique developments flexibility or variations from conventional development requirements such as building height, setbacks, and on-site parking when authorized by City Council. The "Villages of Eastridge Unit 2" subdivision was granted the PAD Overlay to allow varied lot sizes within the development that averaged 6,000 sf., but no variations were specifically approved to the building setbacks.
- 1.5** As justification for the variance, the applicant has noted: 1) that most lots in the neighborhood have neighbors on three sides of the property and this lot does not, it has a park adjacent to the rear property line; 2) the rear of the property faces south and receives full sun, it does not have homes that back up to it, the rear if this lot does not receive shade by other homes; 3) they have constructed a standard size pool and there is a 5 foot distance from the back of the pool to the rear property line; 4) the yard is 25 feet deep by 55 feet wide; 5) the neighbor on the west side of the Ott residence is 6 feet from the property line wall, the Ott residence on the same side (west) is 6'6" from the west property line wall. The neighbor to the east side of the Ott residence is approximately 10' from the property line wall, the Ott residence is 11' from the property line wall; 6) the lattice will encroach only 4' into the 10' side yard; 7) the neighbors to the east have trees along their west property line wall which will obstruct their view and these same neighbors patio, is on the east side of their house; 8) the side of the house that the lattice is going to be installed is 9'6" wide at the fence return; 9) the gate on this side of the house is a standard 4' gate and the overhang on the roof needs to be considered if an RV is ever going to be parked there; 10) the 10' setback is for vehicular access of a boat or an RV which the HOA rules prohibit within the subdivision; 11) if the HOA allowed it and if the homeowner wanted to park a boat or an RV on the side of the house there is approximately 38' of space available from the gate to the barbeque island; 12) the lattice is in the rear one quarter of the yard; 13) only one neighbor will have a partial view of the lattice; 14) the size of the property was pre-existing; 14) the pool location was selected prior to knowing the patio regulations; 15) one footing for the lattice pillar has already been built; 15) the strict zoning requirements do not allow property owners to get full use of their yards; 16) other houses in the area have similar structures built without the benefit of a permit; and 17) the Homeowner's Association has granted approval.
- 1.6** The property owner has provided a copy of The Villages of Eastridge Homeowner's Association approval letter.
- 1.7** As justification the property owner has cited an existing park at the rear of the lot which is "Tract A" a private drainage and retention basin for the subdivision. The applicant indicates they want to shade their home and pool. In addition, the lot in question is larger than some of the smaller 5,500 sf. lots within the subdivision.

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**Board of Adjustment Meeting
September 8, 2009**

D. Other Business:

Mr. Sheffield provided a presentation and discussion of Module 4 of the Zoning Code Update. Module 4 includes the administration of the code and procedures. Areas covered included:

Concepts
Planning Agency
Common Procedures
Permits, Approvals, & Amendments
Appeals
Annexations
Enforcement

Mr. Sheffield reviewed the highlights of the code changes, differences, and answered questions from the Board. The remaining schedule includes a consolidated draft in late fall of 2009, review and comment period in winter/spring 2010 and formal adoption in late spring 2010.

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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